

**Trojan Mining and Processing, Inc. and United Mine Workers of America, District 17, Subdistrict 4. Case 9-CA-29243**

**SUPPLEMENTAL DECISION AND ORDER**

BY CHAIRMAN STEPHENS AND MEMBERS  
DEVANEY AND RAUDABAUGH

On December 9, 1992, the National Labor Relations Board issued a Decision and Order,<sup>1</sup> *inter alia*, ordering Trojan Mining and Processing, Inc., to make whole all bargaining unit employees for any losses they may have suffered as a result of its failure, since at least October 1, 1991, through January 7, 1992, to continue in effect the terms and conditions of employment of its then-existing collective-bargaining agreement with United Mine Workers of America, District 17, Subdistrict 4, to wit, the 1988 National Bituminous Coal Wage Agreement in violation of the National Labor Relations Act.

A controversy having arisen over the amount of backpay due discriminatees, on March 23, 1993, the Regional Director for Region 9 issued a compliance specification and notice of hearing alleging the amount due under the Board's Order, and notifying the Respondent that it should file a timely answer complying with the Board's Rules and Regulations. Although properly served with a copy of the compliance specification, the Respondent has failed to file an answer.

By letter dated June 23, 1993, the Regional Attorney advised the Respondent's attorney that no answer to the compliance specification had been received and that unless an appropriate answer was filed by June 30, 1993, summary judgment would be sought. The Respondent filed no answer but its representative telephonically advised counsel for the General Counsel that it would not be filing an answer and that it was out of business. The Respondent had previously filed a Chapter 11 petition in bankruptcy on January 7, 1992.

On July 21, 1993, the General Counsel filed with the Board a Motion for Summary Judgment and memorandum in support, with exhibits attached. On July 22, 1993, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent again filed no response. The allegations in the motion and in the compliance specification are therefore undisputed.

**Ruling on Motion for Summary Judgment**

Section 102.56(a) of the Board's Rules and Regulations provides that the Respondent shall file an answer within 21 days from the service of a compliance speci-

fication. Section 102.56(c) of the Board's Rules and Regulations states:

If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

The institution of bankruptcy proceedings does not deprive the Board of jurisdiction or authority to entertain and process an unfair labor practice case to its final disposition. *Phoenix Co.*, 274 NLRB 995 (1985). Board proceedings fall within the exception to the automatic stay provisions for proceedings by a governmental unit to enforce its police or regulatory powers. See *id.*, and cases cited therein.

According to the uncontroverted allegations of the Motion for Summary Judgment, the Respondent, despite having been advised of the filing requirements, has failed to file an answer to the compliance specification. In the absence of good cause for the Respondent's failure to file an answer, we deem the allegations in the compliance specification to be admitted as true, and grant the General Counsel's Motion for Summary Judgment. Accordingly, we conclude that the net backpay due the employees is as stated in the compliance specification and we will order payment by the Respondent to the employees.

**ORDER**

The National Labor Relations Board orders that the Respondent, Trojan Mining and Processing, Inc., Ashcamp, Kentucky, its officers, agents, successors, and assigns, shall make whole the employees and the Union, by paying the amounts set forth in the compliance specification, with interest on the backpay owed the employees, to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), less any tax withholdings required by Federal and state law.

Dated, Washington, D.C. August 31, 1993

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James M. Stephens, Chairman

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Dennis M. Devaney, Member

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John Neil Raudabaugh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

<sup>1</sup> 309 NLRB No. 121.